

IN THE HIGH COURT OF KERALA AT ERNAKULAM

WP(C).No. 31039 of 2009(Y)

**1. B.SAJIKUMAR, S/O. LATE BHASKARAN,
... Petitioner**

Vs

**1. KERALA STATE INFORMATION COMMISSION,
... Respondent**

2. DISTRICT COLLECTOR, PATHANAMTHITTA.

3. K.B.KAIMAL, MANGALATH HOUSE,

For Petitioner :SRI.V.PHILIP MATHEW

**For Respondent :SRI.M.AJAY, SC, STATE INFORMATION
COMMN**

The Hon'ble MR. Justice P.N.RAVINDRAN

Dated :02/11/2009

O R D E R

P.N.RAVINDRAN, J.

W.P.(C) No. 31039 OF 2009

Dated this the 2nd day of November, 2009

J U D G M E N T

Heard Sri. V.Philip Mathews, the learned counsel appearing for the petitioner, Sri.M.Ajay, the learned standing counsel appearing for the Kerala State Information Commission and Sri. P.N.Santhosh, the learned Government Pleader appearing for the second respondent.

2. The petitioner is the Village Officer of Kottangal Village. In that capacity, he was also the State Public Information Officer of that office. The third respondent submitted an application dated 3.1.2009 before the petitioner for the photostat copy of a resurvey plan under the Right to Information Act, 2005. The petitioner did not furnish the information sought within the stipulated period of 30 days, The third respondent thereupon filed Ext.P1 complaint dated 6.4.2009 before the State Information Commission. On receipt of Ext.P1 complaint, the State

Information Commission sent Ext.P2 letter to the petitioner enclosing a copy of Ext.P1 complaint and informed him that failure to furnish the information sought within 30 days will amount to violation of Section 7(1) of the Act and that it is also punishable under Section 20 of the Act. The petitioner furnished the information sought on 5.5.2009. In the meanwhile, besides the period of 30 days for furnishing the information, another period of 87 days had passed. The State Information Commission thereupon issued notice to the petitioner, heard him on 25.7.2009 and passed Ext.P4 order dated 28.7.2009 imposing on the petitioner the sum of Rs.21,750/- as fine calculated at the rate of Rs.250/- per day for a period of 87 days. Ext.P4 is under challenge in this writ petition.

3. The petitioner challenges Ext.P4 on three grounds. The first contention is that if the third respondent was aggrieved by the delay in furnishing the information, he ought to have filed an appeal under Section 19 of the Act before the first appellate authority, instead of straight away moving the State Information Commission, which is the second appellate authority. The second contention is that within the time fixed by the Commission in Ext.P2 letter, the information sought was furnished and therefore there is no justification to impose any punishment. In my opinion there is no merit in the said contentions. The petitioner does not dispute that fact that the information sought was not furnished within 30 days. His only explanation to that is due to pressure of work he could not furnish the information in time. In this context it is relevant to note that on receipt of the application the petitioner did not even sent a reply to the third respondent. He kept quite. He acted on the third respondent's application

more than two months after the expiry of the stipulated period of 30 days and that too after the State Information Commission informed him that the Act stipulates a time limit of 30 days and that failure to furnish information within that time limit is punishable. The petitioner thereafter furnished the information sought by the third respondent on 5.5.2009. The mere fact that the petitioner acted on the direction issued by the State Information Commission and furnished the information shortly thereafter cannot have the effect of compliance with Section 7(1) of the Act. I therefore find no merit in the contention of the petitioner that as he had furnished the information pursuant to the direction in Ext.P2, no action will lie against him under section 20 of the Act.

4. I shall now deal with the contention of the petitioner that the third respondent should have moved the first appellate authority instead of moving the State Information Commission. Section 18 of the Act empowers the State Information Commission to enquire into a complaint that there has been no response to the request to furnish information within the time limit specified under Section 7(1) of the Act. Section 7(2) of the Act states that if the information sought is not furnished within the time limit of 30 days, the application should be deemed to have been refused. Therefore by operation of law a deeming fiction is created under which the person seeking information is given the right to file an appeal before the first appellate authority under Section 19 of the Act even though the original authority may not have rejected the application. The mere fact that a person seeking information is entitled to prefer an appeal on the 31st day after his application for information was submitted is not a ground to hold

that the State Information Commission is denuded of its power to enquire into a complaint that there has been no response to the request for information or access to information within the time limit of 30 days. It is open to the person seeking information to move the State Information Commission complaining about the inaction of the State Public Information Officer, instead of filing an appeal. The remedies are concurrent and the mere fact that an appeal lies after the expiry of 30 days to the first appellate authority is no ground to hold that the State Information Commission cannot exercise the jurisdiction vested in it under Section 18 of the Act, before the first appeal is disposed of. I therefore overrule the petitioner's contention that the third respondent ought to have filed an appeal under Section 19 of the Act before the first appellate authority instead of straight away moving the State Information Commission.

5. The last contention urged is that the petitioner has not without reasonable cause declined to furnish the information. Ext.P4 discloses that the petitioner was heard on 25.7.2009. His only answer to the complaint levelled against him was that due to pressure of work in the office, he could not furnish the information in time. Apart from that contention he had no other explanation for the delay in furnishing the information. If the said ground is taken as a reasonable explanation, every Government servant can escape from the consequences of non disposal of applications for information within the period of 30 days by pleading that he had attend to other official duties and therefore he could not furnish the information sought within 30 days. After the Right to Information Act was enacted and brought into force, every Government servant who is designated as the

State Public Information Officer is bound to discharge the duty cast on him under the Act. He cannot decline to take any action on the requests under the Right to Information Act on the ground that he has other duties to attend to. As the State Public Information Officer, the petitioner has a duty to discharge his functions under the Right to Information Act also.

Therefore the mere fact that there was pressure of work on the petitioner, is not a ground to hold that he was not bound to furnish the information within the stipulated period of 30 days. Further, all that the third respondent had asked for was a photostat copy of a resurvey plan. The petitioner could have passed orders on the third respondent's application and directed the staff in his office to implement it. It was not necessary for the petitioner himself to take the photostat copy and hand it over to the applicant. I am therefore not inclined to accept the petitioner's contention that he was prevented by reasonable cause from furnishing the information sought within the stipulated period of 30 days. The State Information Commission has in Ext.P4 categorically found that the explanation offered by the petitioner is not satisfactory. The said finding cannot be said to be a perverse finding warranting interference.

6. The State Information Commission has by Ext.4 order imposed a fine of Rs.21,750/- on the petitioner. The petitioner being a Government servant and a Village Officer will be put to serious prejudice if the said amount is recovered from him in lump. I am therefore of the opinion that the petitioner should be permitted to pay the sum of Rs.21,750/- in five equal monthly installments.

In the result, even while declining to interfere with Ext.P4, I dispose of this writ petition with the direction that in the event of the petitioner remitting the sum of Rs.21,750/- in five equal monthly installments commencing from 10th December 2009 onwards, recovery proceedings pursuant to Ext.P5 shall be kept in abeyance. The first installment shall be paid on or before 10.12.2009 and the remaining installments on the 10th of every succeeding English calendar month. If the 10th of any month is a holiday, payment shall be made on the next working day. It is clarified that if the petitioner commits default in remitting any two consecutive installments, the amount remaining unpaid can be recovered from him in lump.

P.N.RAVINDRAN, JUDGE

vps